

1 ARIZONA VOICE FOR CRIME VICTIMS

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11 **IN THE ARIZONA SUPREME COURT**

12 IN THE MATTER OF:

13 PETITION TO AMEND THE
14 ARIZONA RULES OF CRIMINAL
15 PROCEDURE

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PETITION TO AMEND THE
ARIZONA RULES OF CRIMINAL
PROCEDURE

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17 Pursuant to Rule 28 of the Arizona Rules of the Supreme Court, Arizona
18 Voice for Crime Victims (AVCV) respectfully submits this petition to amend the
19 Arizona Rules of Criminal Procedure by integrating the rights guaranteed to
20 victims by our constitution, Ariz. Const. art. II, § 2.1, and its implementing
21 legislation, Ariz. Const. art. II, §§ 2.1(D) and A.R.S. §§ 13-4401-42, throughout
22 each applicable rule provision and repealing Rule 39. The proposed amendments
23 are attached as Appendix A and Appendix B.
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1 Arizona Voice for Crime Victims (AVCV), founded in 1996, is a non-profit
2 organization located in Phoenix, Arizona that provides pro bono legal
3 representation and social services to victims of crime in state and federal criminal
4 proceedings. AVCV seeks to foster a fair and compassionate justice system in
5 which all crime victims are informed of their rights under the Arizona Victims'
6 Bill of Rights (VBR), fully understand their rights, and have a meaningful way to
7 participate and assert these constitutional guarantees throughout the criminal
8 justice process. To achieve these goals, AVCV empowers victims of crime
9 through legal advocacy and social services. A key part of AVCV's mission is
10 working to give the judiciary information and policy insights that may be helpful in
11 ensuring that victims' rights are upheld by educating the judiciary of the practical
12 day-to-day application of victims' rights in their courtrooms. When criminal court
13 judges and the attorneys involved in each criminal case fully understand when and
14 how victims' rights apply in each situation, victims can truly have the meaningful
15 participation that the VBR intended.

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20 Currently, Rule 39 of the Arizona Rules of Criminal Procedure generally
21 addresses victims' rights. Rule 39 was adopted "in response to the growing
22 perception that victims of crime [were] encountering serious problems with the
23 criminal justice system." Ariz. R. Crim. P. 39 cmt. (1989). Attempting to
24 "ameliorate, if possible, the problems encountered by victims," the Court adopted
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1 Rule 39 in the hope it would “comprehensively” address the concerns of victims.
2 *Id.* After voters adopted the VBR in November 1990, Rule 39 had to be amended
3 to conform to the mandates of the state constitution. Rule 39, however, still only
4 provides an overview of what rights crime victims are entitled to. Unlike the rights
5 of the accused or the rights of the state, which are appropriately and carefully
6 presented in the criminal rules, Rule 39 does not provide proper guidance to trial
7 courts and attorneys on when victims’ rights apply in relation to the remainder of
8 the Rules. To take a comprehensive approach to victims’ rights, full integration
9 into the Rules, in a way that instructs trial courts and attorneys what the VBR
10 mandates in each situation, is required.

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14 Proposition 104 aimed to change the criminal justice culture for victims in
15 Arizona by providing constitutional rights that would take victims from the
16 sidelines of the criminal justice system to becoming active participants. Steven J.
17 Twist & Keelah E.G. Williams, *Twenty-Five Years of Victims’ Rights in Arizona*,
18 47 Ariz. St. L.J. 421 (2015). Proposition 104 received overwhelming support of
19 Arizona’s voters and the Arizona Victims’ Bill of Rights (VBR) became effective
20 on November 27, 1990. Gessner H. Harrison, *The Good, the Bad, and the Ugly:*
21 *Arizona’s Courts and the Crime Victims’ Bill of Rights*, 34 Ariz. St. L.J. 531, 532
22 (2002). The VBR enumerated specific rights to justice and due process, which
23 include rights:
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1 1. To be treated with fairness, respect, and dignity, and to be free from
2 intimidation, harassment, or abuse, throughout the criminal justice
3 process.

4 2. To be informed, upon request, when the accused or convicted
5 person is released from custody or has escaped.

6 3. To be present at and, upon request, to be informed of all criminal
7 proceedings where the defendant has the right to be present.

8 4. To be heard at any proceeding involving a post-arrest release
9 decision, a negotiated plea, and sentencing.

10 5. To refuse an interview, deposition, or other discovery request by
11 the defendant, the defendant's attorney, or other person acting on
12 behalf of the defendant.

13 6. To confer with the prosecution, after the crime against the victim
14 has been charged, before trial or before any disposition of the case and
15 to be informed of the disposition.

16 7. To read pre-sentence reports relating to the crime against the victim
17 when they are available to the defendant.

18 8. To receive prompt restitution from the person or persons convicted
19 of the criminal conduct that caused the victim's loss or injury.

20 9. To be heard at any proceeding when any post-conviction release
21 from confinement is being considered.

22 10. To a speedy trial or disposition and prompt and final conclusion of
23 the case after the conviction and sentence.

24 11. To have all rules governing criminal procedure and the
25 admissibility of evidence in all criminal proceedings protect victims'
rights and to have these rules be subject to amendment or repeal by
the legislature to ensure the protection of these rights.

12. To be informed of victims' constitutional rights.

Ariz. Const. art. II, §§ 2.1(A)(1)-(12)

1 Full integration of victims’ rights into each applicable Arizona Rule of
2 Criminal Procedure is justified by the very language of the VBR, which
3 guarantees, among other things, that victims have a right to be treated with
4 fairness, respect, and dignity throughout the criminal justice process and to have
5 “all rules governing criminal procedure and the admissibility of evidence in all
6 criminal proceedings protect victims' rights.” Ariz. Const. art. II, § 2.1(A)(1) and
7 (11). This Court has acknowledged that the VBR broadly recognizes these rights
8 to fairness, respect, and dignity. *J.D.;M.M. v. Hegyi*, 236 Ariz. 39, 42 (Ariz.
9 2014). The purpose of the VBR and its implementing legislation is to provide
10 crime victims with the “basic rights of respect, protection, participation and healing
11 of their ordeals.” *Champlain v. Sargeant*, 192 Ariz. 371, 375 (Ariz. 1998) (citing
12 1991 Ariz. Sess. Laws ch. 229, § 2). The constitutional mandate requiring that
13 victims be treated with “fairness” throughout the criminal justice process can be
14 best achieved by fully integrating victims’ right into the Arizona Rules of Criminal
15 Procedure, which, in turn, will “integrate victims into the day to day workings of
16 the process.” Paul Cassell, *Treating Crime Victims Fairly: Integrating Victims into*
17 *the Federal Rules of Criminal Procedure*, 2007 Utah L. Rev. 861, 863 (2007).

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22 Moreover, integrating victims’ rights into each applicable rule would be
23 consistent with the rights established in paragraph 11 of the VBR, namely that “all
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1 *rules* governing criminal procedure and the admissibility of evidence in all
2 criminal proceedings protect victims' rights.” (emphasis added.)

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4 Maintaining Rule 39 would only continue to provide a general overview of
5 victims’ rights and welcome misunderstanding of their applicability by trial courts
6 and attorneys. Full integration of the VBR into the applicable Rules would not
7 create new victims’ rights or violate the rights of the accused. Rather, it would
8 give effect to the VBR by allowing victims meaningful participation into the day-
9 to-day workings of the process. Additionally, full integration would provide
10 comprehensive guidance to criminal justice professionals using the constitutional
11 and statutory mandates that already exist. Ensuring each applicable rule fully
12 complies with the constitutional and statutory provisions will safeguard the rights
13 of crime victims, especially for the majority who do not have the benefit of their
14 own counsel.
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17 Arizona has traditionally been on the forefront of victims’ rights. It was one
18 of the first states in the country to provide victims of crime with constitutional
19 rights. Harrison, 34 Ariz. St. L.J. at 532 (2002). Since then, this Court has been
20 tasked with balancing the rights of victims with those of the accused and has
21 addressed issues of first impression that have both protected and upheld victims’
22 rights in Arizona and provided guidance to other jurisdictions in the country.
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25 AVCV asks the Court to leave a legacy for future criminal justice professionals by

1 fully integrating victims' rights throughout the Arizona Rules of Criminal
2 Procedure and providing victims the medium needed to have meaningful
3 participation throughout the entire criminal justice process.
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6 Respectfully submitted January 3, 2018.
7 ARIZONA VOICE FOR CRIME VICTIMS
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9 BY: /s/
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